Supreme Court, U.S.
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No. ____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

JOAN R. EDWARDS, Petitioner,

v.

THE GREAT-WEST LIFE ASSURANCE COMPANY, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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August 31, 1994

QUESTIONS PRESENTED

1. Is the Eleventh Circuit Court of Appeals' interpretation of "actively at work" in United of Omaha Life Ins. v. Sun Life Ins. Co., 894 F.2d 1555 (11th Cir. 1990) the better application of the federal common law on insurance contracts to apply to Great-West Life Assurance's policy?

2. Does the case law cited by the Seventh Circuit Court of Appeals support its interpretation of "actively at work" as the term is used in Great-West Life Assurance's policy?

3. Is the Seventh Circuit's interpretation of "actively at work" supported by the language of Great-West's policy?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINIONS BELOW

Judgment was entered in favor of the plaintiff by the District Court on May 29, 1993. Judgment was entered by the Seventh Circuit Court of Appeals on April 1, 1994. A petition for rehearing was denied on June 2, 1994.

JURISDICTION

The jurisdiction of the United States Supreme Court is conferred by 28 U.S.C. §1254(1). This case was removed to Federal District Court by the authority of 29 U.S.C. §1132(4e)(1). An appeal of the District Court's final decision was brought by Great-West Life Assurance Company under 29 U.S.C. §1291.

STATUTES INVOLVED

29 U.S.C. §1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought--

(1) by a participant or beneficiary--

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

STATEMENT OF THE CASE

The parties to this action have stipulated to the facts. The dispute arises over the interpretation of the phrase "actively at work" in a life insurance policy issued by Great-West Life Assurance.

Thomas James Edwards began work for Quad/Graphics in January 1990. Under the terms of the policy in question, Mr. Edwards was deemed to have commenced work on January 1, 1990. On the evening of February 27, 1990, Mr. Edwards fell down the stairs of his residence and sustained serious injuries. He was transported to the hospital and remained there until his death on the evening of March 1, 1990. His employment was not terminated until after his death.

As a beneficiary to Mr. Edwards' life insurance policy, Joan Edwards timely filed a claim. The parties agreed that Mr. Edwards' death was accidental; however, Great-West denied the claim because Mr. Edwards was not "actively at work" at the time of his death and did not qualify under the plan. The plan provided that "the insurance of any employee who is not actively at work on the date his insurance would otherwise become effective shall not become effective until the date of his return to work." In the plan, work was defined as "active and full-time work in the service of the employer." Service was then defined by the plan as "employment with

the employer on an active, permanent, full-time and full-pay basis."

Mrs. Edwards brought this action in Wisconsin circuit court. The defendant removed the action to the federal district court under 28 U.S.C. §1441 on the jurisdictional authority of 29 U.S.C. §1132. On cross-motions for summary judgment, the district court found the policy ambiguous and ruled in favor of the plaintiff. The defendant appealed to the Seventh Circuit Court of Appeals which reversed the district court's ruling. A petition for rehearing was denied. Plaintiff now petitions for certiorari and prays that the Court review the judgment of the court of appeals.

REASONS FOR GRANTING THE WRIT

I.

The conflict between the Seventh and Eleventh Circuits should be resolved.

The Seventh Circuit decision is in direct conflict with the Eleventh Circuit's decision in United of Omaha Life Ins. v. Sun Life Ins. Co., 894 F.2d 1555 (11th Cir. 1990). The Seventh Circuit interprets "actively at work" narrowly to mean that a person must be "capable of working on the next regularly scheduled work day." Edwards v. Great-West Life Assur. Co., 20 F.3d 748, 749 n.1 (1994). However, the Eleventh

Circuit has interpreted the language differently.

In Sun Life, the Eleventh Circuit found that the phrase "actively at work" was ambiguous. In interpreting two policies, it found that one failed to distinguish between those who failed to meet the requirement because they were temporarily on sick leave or had permanently left work. The court found that the "active work" requirement could not apply to employees on short-term sick leave. Sun Life, 894 F.2d at 1565. In a second policy, the term "actively working" was determined by the court to be ambiguous because the employer treated employees on sick leave as "active employees" for up to six months. Id. at 1560. Because language did not exist clearly defining the term "actively employed," the court found that a question of material fact existed and remanded the case for further fact-finding as to the understanding of the term between the employer and the insurer.

The broad construction of the term "actively at work" adopted by the Eleventh Circuit is the appropriate rule to apply in this case. The Seventh Circuit, in its opinion, attempts to apply one definition to all policies. The Eleventh Circuit's construction of the term recognizes that different definitions can apply to different policies and that each policy must be interpreted based on the facts of the case.

II.

The Great-West policy is less restrictive than the policies relied on by the Seventh Circuit in its Opinion.

In support of its decision, the Seventh Circuit cites a number of cases that are distinguishable from this case. These cases rely on policy language that is more restrictive than the language in this case.

In Velez v. Crown Life Insurance Co., 599 F.2d 471 (1st Cir. 1979), "at work" was defined in the policy as "[a]ctually present at the location where the employee is employed on a full time and full pay basis." Id. at 475. In Carnes v. Woodmen Accident & Life Insurance Co., 746 S.W.2d 105 (Mo. Ct. App. 1988), "active work" was defined by the policy as "performance of all regular duties of the Insured Person's employment or occupation on a full-time basis." Id at 106. In Creduer v. Continental Assurance Co., 502 So.2d 214 (La. Ct. App. 1987), the policy read that an employee's insurance would not come into effect if he is "absent from active full-time work on account of accidental bodily injury or sickness." Id. at 217. In Smillie v. Travelers Insurance Co., 302 N.W.2d 258 (Mich. App. 1980), an employee was eligible for benefits "provided that no Employee who is not actively at work performing all his duties of his employment with the Employer at his

customary place of employment on the date his insurance becomes effective shall be insured until he returns to active work and the performance of all such duties." Id. at 259. Finally, in Rabinovitz v. Travelers Insurance Company, 105 N.W.2d 807 (Wis. 1960), the policy required that an eligible employee must be "actively at work performing all of the duties of his employment with the employer member at his customary place of employment on the date his insurance is to become effective." Id. at 812.

Additional cases cited by the Seventh Circuit did not supply the exact language of the policy. Todd v. Dow Chemical Co., 760 F.2d 192 (8th Cir. 1985), does not supply the actual language; instead, the case cites very specific language from the policy in dispute in Smillie: "actively at work performing all of the duties of his employment . . . at his customary place of employment." Todd, 760 F.2d at 194 (quoting Smillie, 302 N.W.2d at 259). Because the court in Todd relies on the language in Smillie to interpret the "actively at work" language in the Dow Chemical policy, it must be assumed that the policy in question in Todd contained identical language to that in Smillie.

Also, in Starlite Services v. Prudential Insurance Co., 418 So. 2d 305 (Fla. Ct. App. 1982), the Court read the policy as requiring that "the employee must be actively at work on a full time basis at the business of the employer." Id. at 306. The Court in Gulf Life

Insurance Co. v. Hickey, 476 So.2d 762 (Fla. Ct. App. 1985), relies on the holding in Starlite for its decision. Gulf Life, 476 So. 2d at 763. Again, because neither decision quotes the specific policy language in dispute, it follows that both policies must have fully defined "actively at work" with more restrictive language.

The court also cited two cases that circumvent the dispute in this case. In the unpublished opinion in Riggs v. Metropolitan Life Insurance Co., 977 F.2d 573 (4th Cir. 1992) (text in Westlaw), the 4th Circuit Court based its opinion on the fact that Metropolitan required evidence that the proposed insured was in "good health." Because there was evidence that the proposed insured was not in "good health," coverage was denied. In a second case, Elsey v. Prudential Insurance Co., 262 F.2d 432 (10th Cir. 1958), the plaintiff **admitted** that the insured was not actively at work on the effective day of the policy. Id. at 434. Therefore, the meaning of "actively at work" was not in dispute in the case and the case is not applicable to this dispute.

In the case at hand, the language of the policy does not specifically identify or define what "actively at work" means. This contract does not denote where, when, or what work is to be done as a condition to the policy coming into effect. Contra Rabinovitz, Smillie, Velez. It also does not provide examples to show why a person may not be

considered actively at work. Contra Carnes, Creduer. It is a well-recognized rule that the writing embodies the entire agreement between parties and that "construction of a contract consists of the construction of the writing." 17A AM. JUR. 2D Contracts §396 (1991). Because the cases relied upon by the court of appeals interpret policy language that is far more specific than the Great-West policy, these cases cannot be used to interpret the term "actively at work" in the context of the Great-West policy. The precedent set by the Seventh Circuit is very poor as it allows insurance companies to rely on case law rather than the language of their policies to deny coverage.

III.

Great-West's policy does not support the Seventh Circuit's interpretation.

Finally, the language of the insurance policy does not support the Seventh Circuit's decision. The policy provides that an employee who is "not actively at work on the date his insurance would otherwise become effective shall not become effective until the date of his return to work. The policy goes on to define work as "active and full-time work in the service of the employer" and to define service as "employment with the employer on an active, permanent, full-time and full-pay basis." In this case, Mr. Edwards

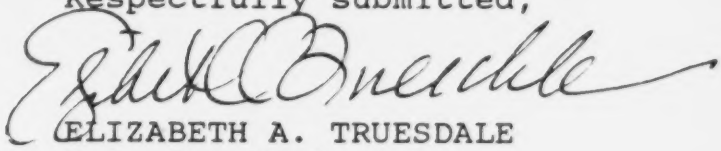
remained a full-time employee on active status with the company until the time of his death. Other qualifying language within the Great-West policy, which applies to eligibility for an increase in benefits calls for an employee to be "actually at work" in order to qualify for that increased coverage. Clearly, then, had Great-West intended an employee to be "actually at work" before becoming eligible for the initial coverage, it would have used the term "actually at work" in both eligibility provisions. It did not, and cannot now assert, without having defined the term it did use, "actively at work," that the two are equivalent. Under the language of the policy as a whole, Mr. Edwards qualified for benefits under Great-West's insurance policy. Because the policy supports an interpretation that Mr. Edwards was actively at work at the time of his death, the Seventh Circuit's decision should be overturned.

CONCLUSION

Petitioner asks for certiorari to resolve the conflicting rules of law between the Seventh and Eleventh Circuits decision. Additionally, the petitioner prays that the Court will exercise its supervising capacity because the sweeping rule established by the Seventh Circuit's opinion fails to distinguish the facts of this case from those cited by the court

in its decision and fails to interpret the policy as written.

Respectfully submitted,



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August 31, 1994

IN THE SUPREME COURT OF THE UNITED STATES
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APPENDIX

OPINIONS OF ALL COURTS

ELIZABETH A. TRUESDALE
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August 31, 1994

In the

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 93-2486
JOAN R. EDWARDS,

Plaintiff-Appellee,

v.

THE GREAT-WEST LIFE
ASSURANCE COMPANY,

Defendant-Appellant.

Appeal from the United States District
Court for the Eastern District
of Wisconsin.
No. 92 C 41--**Terence T. Evans**, Chief Judge

ARGUED JANUARY 3, 1994
DECIDED APRIL 1, 1994

Before CUMMINGS and CUDAHY, Circuit Judges, and ROSZKOWSKI, District Judge.*

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*The Honorable Stanley J. Roszkowski, District Judge for the Northern District of Illinois, is sitting by designation.

CUMMINGS, Circuit Judge. Plaintiff Joan R. Edwards filed a suit against The Great-West Life Assurance Company ("Great-West") in a Wisconsin state court seeking benefits allegedly due her under an employee welfare benefit plan formulated pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1001 et seq. Defendant removed the action to the court below under 28 U.S.C. §§1441 and 1446.

The suit was a claim for recovery of benefits under 29 U.S.C. §1132. The question was whether plaintiff's deceased husband was eligible for death benefits, and the facts were stipulated. The district court entered judgment for plaintiff, resulting in this appeal.

Plaintiff's late husband, Thomas Edwards, was employed by Quad Graphics beginning January 3, 1990. Under the employee welfare benefit plan maintained by that concern, Mr. Edwards was eligible to participate upon satisfaction of the eligibility requirements of the plan. The plan provided general death and accidental death benefits upon the death of a covered employee. Quad Graphics purchased a group insurance policy from the defendant to fund the death benefits.

Great-West issued two group insurance policies providing for accidental death benefits and a specified death benefit. Both policies contained a clause defining employee eligibility and a clause defining the date of

effective coverage. The eligibility clause provided as follows:

> EMPLOYEES ELIGIBILITY FOR INSURANCE
>
> An employee whose service commences on or after January 1, 1990, is eligible: the first day of the insurance month coinciding with or next following the date on which he completes 60 days of continuous service. Employees starting between the first and tenth of the month will be counted as having started on the first of that month.

The effective date clause provided:

> EFFECTIVE DATE OF AN ELIGIBLE EMPLOYEE'S INSURANCE
>
> . . . It is, however, specifically provided that insurance of any employee who is not actively at work on the date his insurance would otherwise become effective shall not become effective until the date of his return to work. (Emphasis supplied.)

On February 27, 1990, Mr. Edwards went home from work at 3:30 p.m. and thereafter accidentally fell down the basement stairs of his Oconomowoc, Wisconsin, residence. He was hospitalized in a coma and died on the

evening of March 1, 1990, thus missing his February 28 and March 1 shifts.

Mrs. Edwards was the designated beneficiary of her husband and submitted claims for specified death benefits and accidental death benefits under the plan. Great-West denied the claims on the ground that her husband was not "actively at work" on March 1, 1990, as required by the policies. Thereupon his wife filed this suit.

The district judge held that the phrase "actively at work" was satisfied because Mr. Edwards had been a Quad Graphics employee for 60 days before he died, thus supposedly satisfying the "actively at work" phrase and entitling Mrs. Edwards to recover. While sympathetic to such interpretation, we cannot accept it. Therefore we reverse.

Our holding is in accord with the leading decision in point. Thus in Todd v. Dow Chemical Company, 760 F.2d 192 (8th Cir. 1985), being "actively at work" was also a condition precedent to an effective contract of insurance. As then-Chief Judge Lay explained in a persuasive opinion, this condition was not satisfied because Mr. Todd was hospitalized on the eligibility date and never returned to work before his death. This ruling is in accord with the ordinary common-sense meaning of the quoted phrase and is further buttressed by the additional language in the effective date clause that the insurance "shall not become effective until the

date of his return to work." Mr. Edwards' coverage could not possibly become effective because on the effective date of March 1 he was in a coma and died that night.

Our construction of the phrase "actively at work" accords with the ordinary understanding that the employee must be at work or be capable of performing his job on the day the insurance is to commence. Therefore, the rule of Phillips v. Lincoln Nat. Life Ins. Co., 978 F.2d 302, 308 (7th Cir. 1992), that ambiguous terms in an insurance contract shall be construed in favor of the insured, does not apply.[1] That rule is limited to where there is

---

[1] Plaintiff argues that the phrase "actively at work" is ambiguous because she believes that Great-West has improperly equated "actively at work" with another phrase that appears in its contracts of insurance, "actually at work." Reply Br. at 21. Great-West makes clear, however, that it does not equate these two phrases: "Actively at work" means, according to the defendant, that the employee was capable of working on the next regularly scheduled workday, while "actually at work" means that the employee was actually at work. See, e.g., Opening Br. at 11. Hence according to Great-West if the employee's waiting period ended on a Saturday (and therefore the employee was not actually at work when the period ended), the employee would still be covered as of that

genuine uncertainty; in addition, the insured's reading must be reasonable. Harnischfeger Corp. v. Harbor Ins. Co., 927 F.2d 974, 976 (7th Cir. 1991), certiorari denied, 112 S. Ct. 189. Neither such condition is present here.

Other courts construing similar language are in accord with Todd. See, e.g., Velez v. Crown Life Ins. Co., 599 F.2d 471, 476 (1st Cir. 1979) (alternative holding); Elsey v.

Saturday just so long as the employee was capable, on Saturday, of appearing at work on Monday.

While we agree with plaintiff that "actively at work" is susceptible to the narrower definition (the employee is actually at work) rather than the broader one suggested by defendant, this is not the type of ambiguity that allows plaintiff to invoke the doctrine of contra proferentum. "Rules of interpretation are tie-breakers . . .," Harnischfeger Corp. v. Harbor Ins. Co., 927 F.2d 974, 976 (7th Cir. 1991), certiorari denied, 112 S. Ct. 189, and plaintiff's proposed "ambiguity" does not create a tie which we may break in her favor: Whether "actively at work" means, as defendant argues, capable of being at work on the next scheduled workday, or whether it means, as plaintiff suggest, actually being at work, Mr. Edwards was not "actively at work" when he lay in a coma on the last day of the eligibility period.

Prudential Ins. Co. of America, 262 F.2d 432, 434 (10th Cir. 1958); Riggs v. Metropolitan Life Ins. Co., 977 F.2d 573 (unpublished), 1992 WL 237295 (4th Cir. Sept. 25, 1992); Rabinovitz v. Travelers Ins. Co., 105 N.W.2d 807, 812 (Wis. 1960); Carnes v. Woodmen Accident and Life Co., 746 S.W.2d 105, 107 (Mo. Ct. App. 1988); Creduer v. Continental Assurance Co., 502 So.2d 214, 219 (La. Ct. App. 1987); Gulf Life Ins. Co. v. Hickey, 476 So.2d 762, 763 (Fla. Ct. App. 1985), citing Starlite Services, Inc. v. Prudential Ins. Co. of America, 418 So.2d 305, 307 (Fla. Ct. App. 1982); Smillie v. Travelers Ins. Co., 302 N.W.2d 258, 260 (Mich. Ct. App. 1980).

If we held to the contrary, we would be rewriting the plan and in effect setting up a new insurance contract between Quad Graphics and Great-West. That would be impermissible. Burnham v. Guardian Life Ins. Co. of America, 873 F.2d 486, 490 (1st Cir. 1989). Although sympathetic to plaintiff, we cannot redraft this insurance contract. As the First Circuit put it in an analogous situation, "Courts have no warrant to redraft insurance contracts to palliate the effects of considered language on the occasional hard case." Id. at 491

The judgment below is reversed with directions to dismiss this action.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

JOAN R. EDWARDS,

Plaintiff,

v. Civil Action No. 92-C-41

THE GREAT-WEST LIFE ASSURANCE COMPANY,

Defendant.

O R D E R

Joan Edwards seeks to recover the proceeds from her husband's group insurance policies provided through his employment with Quad/Graphics, Inc. Cross-motions for summary judgment are pending.

The parties have filed a stipulation of facts and have also stipulated that for purposes of this lawsuit, the case should be considered as a claim for recovery of benefits under 29 U.S.C. §1132, the Employee Retirement and Income Security Act, (ERISA).

The facts show that Joan Edwards was married to Thomas James Edwards. Mr. Edwards began employment with

Quad/Graphics on January 2 or 3, 1990. At the time, he was 55 years old. The company maintains a group life policy and a group health policy, including accidental death coverage, from The Great-West Life Assurance Company. Mr. Edwards had both policies and both provided $50,000 in death benefits. The policies contain identical eligibility language and, under both policies, an employee beginning work from the 1st through the 10th of the month is deemed to have started work on the first. Mr. Edwards' employment thus was deemed to have begun on January 1, 1990. He was employed at Quad/Graphics as a permanent, full-time employee, and he worked at the company's usual and customary place of business.

Mr. Edwards designated Mrs. Edwards as the beneficiary under both policies.

After he had worked all day, at approximately 7:30 p.m. on February 27, 1990, Mr. Edwards fell down the basement stairs at his home in Oconomowoc, Wisconsin, and sustained severe head injuries. He was taken to Froedtert Memorial Hospital in Milwaukee, where he remained until his death at 9:20 p.m. on March 1, 1990.

Mr. Edwards had been scheduled to work on February 28 and March 1. On the 28th, Mrs. Edwards notified Quad/Graphics that Mr. Edwards was unable to report to work because of the accident. His employment at Quad/Graphics was not terminated prior to his death.

Mr. Edwards' death was accidental under the terms of the policies and Mrs. Edwards made a timely claim for benefits. What then, one may wonder, is the issue in this case?

Both policies contain eligibility language as follows:

> An employee whose service commences on or after January 1, 1990 is eligible on the first day of the insurance month coinciding with or next following the date on which he completes 60 days of continuous service. Employees starting between the first and the tenth of the month will be counted as having started on the first of the month.
>
> . . . .
>
> It is, however, specifically provided that the insurance of any employee who is not actively at work on the date his insurance would otherwise become effective shall not become effective until the date of his return to work.

The parties agree that Mr. Edwards' 60 days was up on March 1, 1990. Had he been at work that day, there is no dispute that his insurance would be effective as of that day. As I stated above, that is the day he died.

The issue, as framed by the parties, boils down to the meaning of the phrase "actively at work." Great-West contends that the phrase is clear and unambiguous. The company contends that it means that he must be on the work premises or capable of working. He could qualify for the insurance, according to Great-West, if he were on vacation or on a day off, but not if he were in the hospital on the day his insurance is to become effective. In other words, he does not actually have to be on the employer's premises, but there are some place he cannot be. The purpose of the waiting period, the company states, is to provide some evidence of an employee's insurability; that is, no physical examination is required and the waiting period helps reduce the risk of insuring those who are uninsurable.

On the other hand, Mrs. Edwards points out the phrase "actively at work" is not defined in the policies. To determine what the phrase means, she looks to relevant definitions included in the policies. An "active employee," at page 3, 6, is one who is on an "active, permanent, full-time and full pay basis." It is not, the policy says, one who is temporary or part-time, who works less than 30 hours per week, or who does not work at the employer's "usual and customary place of business . . . ." Mr. Edwards, she argues, qualified as an active employee.

In addition, Mrs. Edwards contrasts the phrase "actively at work" with the phrase "actually at work," which is used in the section of the policy providing for an increase in insurance. The use of the two phrases means that "actively at work" does not require one to actually be on the job at the moment.

Because the claims are ERISA claims, the case must be decided under the federal common law. In fashioning the federal common law, courts may borrow from state law where appropriate. See, e.g., Cury v. Colonial Life Ins. Co. of America, 737 F. Supp. 847 (E.D. Pa. 1990).

Language in insurance contracts, so long as it is unambiguous, must be given its ordinary and usual meaning. Equitable Life Assurance Society v. Porter-Englehart, 867 F.2d 79 (1st Cir. 1989). Words and phrases should not be rendered "insensible of meaning or superfluous." Merrill v. Travelers' Insurance Co., 91 Wis. 329, 335 (1895). However, if the contract is ambiguous or susceptible to more than one construction, the language must be construed against the insurer. See, e.g., Henri's Food Products Co. v. Home Insurance Co., 474 F. Supp. 889 (E.D. Wis. 1979).

I have read the cases on which Great-West relies, primarily Rabinovitz v. Travelers Insurance Co., 11 Wis. 2d 545 (1960); Todd v. Dow Chemical Co., 760 F.2d 192 (8th Cir. 1985); and Burnham v.

Guardian Life Insurance Co. of America, 873 F.2d 486 (1st Cir., 1989). The cases deal with similar policies, but only the Todd case focuses on the language in question here. In Todd, the court determined that the language was clear and unambiguous. I must disagree.

The language "actively at work" can mean a number of things in the context of this policy. It might mean that on the day one's insurance is to become effective, one must literally be, for instance, on the factory floor, in the printing shop, or at the computer terminal. However, it seems not to mean that. As I stated above, Great-West concedes that the phrase means that a person who is at work or on a day off or on vacation is "actively at work," but a person missing work due to illness or accident is not "actively at work" even though he remains on the payroll. I am not convinced that such an interpretation would occur to the average insured or, in fact, can be extrapolated from the language of the policy. In addition, the concept is not difficult. If that's what the insurance company meant, it could have found a way to say so.

One could also perhaps be forgiven a little skepticism about whether the company would adhere to this interpretation if Mr. Edwards' 59th day had been a day off--say a Saturday, and his 60th day had been a Sunday. Then, if he had fallen on Monday and had died without literally returning to the job site, would the insurance company have

found that he qualified for the insurance?

I believe that the policy is written in a manner sufficiently ambiguous to inspire the company, in that case as in this case, to argue that he would not qualify.

Mrs. Edwards has presented another possible interpretation, and, in my view, one which is the most obvious meaning of the phrase: the phrase means a person must be an "active employee" as that term is defined in the policy. This interpretation seems consistent with the interpretation of the other requirement, 60 days of continuous service.[1] Literally, 60 days of continuous service could mean 60 actual work days without absence. But the company does not interpret the phrase this way. Both parties agree that Mr. Edwards' 60th day was March 1, which is 60 calendar days from the onset of his employment, not 60 working days. Under a parallel interpretation of "actively at work," if a new employee retains his job for 60 days, and is not laid off, e.g. then he obtains the benefits if, on the day his benefits vest, he is an "active" full-time employee. He cannot be laid off, or have had his hours reduced to fewer than 30 per week. The interpretation is the

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[1]Sixty days is a bit of a simplification, but I will save the complications for later.

one which I believe most insureds would give to the policy.

While under this interpretation it might look as if the "actively at work" phrase adds nothing to the 60-day requirement, that is not inevitably the case. The complication in the 60-day requirement is that a person is eligible "the first day of the insurance month coinciding with or next following the date on which he completes 60 days of continuous service." The insurance month is computed from the Group Policy Effective Date, which is May 1, 1980. The Insurance month begins on the first of the month.

In Mr. Edwards' case, his employment is deemed to have started January 1, his 60 days extends to Mach 1, and the beginning of his insurance month coincides with the completion of his 60 days. Therefore, the date his insurance becomes effective would be March 1. Under those circumstances, it would not be possible to complete 60 days of continuous service without being actively at work. One could then question whether the "actively at work" phrase had meaning.

However, in other cases the phrase has meaning, and those cases indicate the meaning and importance of the phrase. An employee hired after the 10th of the

month[2] could have 60 days of continuous service on, say the 17th of a month. Then, apparently, his insurance would become effective on the first of the following month, the "first day of the insurance month." In this situation, the "actively at work" phrase has significance. If the hypothetical employee, who had 60 days of continuous service on the 17th, were laid off or had his hours reduced on the 20th, then his insurance would become effective on the first of the following month only if he had been called back to full-time work by that time; i.e., if he were "actively at work." This reading of the policy gives effect to both clauses.

What this discussion shows, I believe, is that the policy is nothing if not ambiguous. When there is ambiguity, a policy must be construed to the benefit of the insured. Accordingly, I find that Mr. Edwards completed his 60 days of continuous service n March 1 and was "actively at work," i.e., an active full-time employee, on that date. Mrs. Edwards wins the case. Judgment will be entered in her favor.

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[2]If the employee were hired during the first 10 days of the month, his employment is deemed to have begun on the first.

SO ORDERED at Milwaukee, Wisconsin, this 27 day of May, 1993.

BY THE COURT:

/s/
Terence T. Evans
Chief Judge

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